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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Benno Tiede

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

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BRIARCLIFF MANOR, NY 10510

EXAMINER

DINH, TAN X

ART UNIT

PAPER NUMBER

2627

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/527,120	<b>Applicant(s)</b> TIEKE ET AL.	
	<b>Examiner</b> TAN X. DINH	<b>Art Unit</b> 2627	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1) The Appeal Brief filed **3/30/2009** is acknowledged. The applicant's arguments on Appeal Brief are found persuasive, the final office action is withdrawn herein. The following is a new ground of the rejections.

2) The drawings were received on **8/06/2008**. These drawings are acceptable.

The replacement sheets for labeling circuit blocks in figure 2 and labeling figures **3, 4A, 4B, 5A, 5B and 6** as " PRIOR ART ".

3) The **I.D.S** filed **11/10/2005** has been partially considered by the Examiner. The following references are not considered at this time because:

- The copy of **EP 1 150 291 A2** is not complete, the document stop at page 8. A complete copy of this document is required in next communication, and

- The copy of **JP 11066622** is missing. A complete copy of this document is required in next communication.

Form **PTO-1449** or **PTO/SB/08** is(are) attached herein.

4) The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5) Claim 5 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The original specification fails to specify that " the pre-formed recording control pattern is constituted by a pre-groove indicating the position of the track, the pre-groove exhibiting a wobble constituted by displacements of the pre-groove in a direction transverse to the longitudinal direction of the track, and the wobble exhibiting a modulation representing the recording stack type indicator ", as claimed in claim 5. Without this teaching, anyone within the level of skill in the art cannot practicing the invention.

6) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

7) (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8) Claims **1 and 2** are rejected under 35 U.S.C. 102(b) as being anticipated by **APPLICANT'S PRIOR ART ( FIGURES 3,4A,4B,5A,5B and 6 )**.

The APPLICANT'S PRIOR ART ( FIGURES 3,4A,4B,5A,5B and 6 ) discloses an record carrier of a writable type for recording information by writing marks in a track via a beam of radiation entering through an entrance face of the record carrier, as claimed in claim 1, comprising:

a first recording layer having a first recording stack of a first type ( Fig.3, 40 or  $L_0$  ); and

a second recording layer having a second recording stack of a second type ( Fig.3, 41 or  $L_1$  );

the first recording layer being present at a position closer to the entrance face than the second recording layer and the first and second recording stack having different writing parameters ( the recording layers having different physical characteristics, such as, light reflection, sensitivity, etc.,. This is principle of dual recording layers optical disc ); and

at least one transparent spacer layer between the recording layers ( Fig.3, transparent space layer 42 );

each recording layer comprising a pre-formed recording control pattern that is readable via said beam for indicating the track, and at least one recording control pattern comprising a recording

stack type indicator for indicating writing parameters ( see specification, pages 7-8. It is noted that, each recording layer in dual-layer disc (DVD-ROM, DVD-RW, DVD-R, etc.,) having different physical characteristics (reflection and transmission), in order to access deeper layer  $L_1$  the upper layer  $L_0$  should be sufficiently transparent at the laser wavelength. Also, to obtain sufficient read-out signals from the deeper layer  $L_1$ , this layer should be highly reflecting at the laser wavelength. Other physical characteristics, such as, tracking directions, groove depths, writing power, etc., must be known to the disc player. All of that information are preformed on the recording control pattern which encodes the recording stack type indication ).

As to claim 2, APPLICANT'S PRIOR ART shows the recording control pattern of the first recording layer comprises a recording stack type indicator for indicating the writing parameters of the first recording stack, and the recording control pattern of the second recording layer comprises the recording stack type indicator for indicating the writing parameters of the second recording stack ( see figure 3 and the specification, pages 7-8 ).

9) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10) This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C.103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C.103(c) and potential 35 U.S.C.102(e), (f) or (g) prior art under 35 U.S.C.103(a).

11) Claims 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over APPLICANT'S PRIOR ART ( FIGURES 3,4A,4B,5A,5B and 6 ).

The APPLICANT'S PRIOR ART ( FIGURES 3,4A,4B,5A,5B and 6 ) discloses all the subject matter as claimed in claim 3, *except to specifically show that* the recording stack type indicator of first recording layer indicating the writing parameters of second recording stack. It would have been obvious to use recording stack type indicator of first recording layer for indicating the writing

parameters of second recording stack as claimed since the recording stack type indicator of each layer can be encoded to identify writing parameter either of itself or other recording layer as well.

As to claim 4, it would have been obvious to use recording stack type indicator for indicating polarity of push-pull signal during scanning tracks since this technique is old and widely used in inverted type dual-layers optical disc.

As to claim 5, APPLICANT'S PRIOR ART shows pre-formed recording control pattern is constituted by pre-groove ( figure 3 and specification, pages 7-8. see also figure 6 and specification, page 10 ).

The APPLICANT'S PRIOR ART ( FIGURES 3,4A,4B,5A,5B and 6 ) discloses an record carrier of a writable type for recording information by writing marks in a track via a beam of radiation entering through an entrance face of the record carrier, as claimed in claim 6, comprises a first recording layer having a first recording stack of a first type ( Fig.3, 40 or  $L_0$  ), a second recording layer having a second recording stack of a second type ( Fig.3, 41 or  $L_1$  ), the first recording layer being present at a position closer to the entrance face than the second recording layer and the first and second recording stack having different



writing parameters ( the recording layers having different physical characteristics, such as, light reflection, sensitivity, etc.,. This is principle of dual recording layers optical disc ), at least one transparent spacer layer between the recording layers ( Fig.3, transparent space layer 42 ), each recording layer comprising a pre-formed recording control pattern that is readable via said beam for indicating the track, and at least one recording control pattern comprising a recording stack type indicator for indicating writing parameters ( see specification, pages 7-8. It is noted that, each recording layer in dual-layer disc (DVD-ROM, DVD-RW, DVD-R, etc.,) having different physical characteristics (reflection and transmission), in order to access deeper layer  $L_1$  the upper layer  $L_0$  should be sufficiently transparent at the laser wavelength. Also, to obtain sufficient read-out signals from the deeper layer  $L_1$ , this layer should be highly reflecting at the laser wavelength. Other physical characteristics, such as, tracking directions, groove depths, writing power, etc., must be known to the disc player. All of that information are preformed on the recording control pattern which encodes the recording stack type indication ), *except to specifically show* an optical head for generating light beam and detecting the reflected light beam, a demodulation unit for demodulating signal from stack type indicator

and a control unit for controlling the operations of the recording vice. It would have been obvious to used optical head, demodulator and controller in the APPLICANT'S PRIOR ART ( FIGURES 3,4A,4B,5A,5B and 6 ) as claimed since these elements/devices are essential elements/devices in every dual-layer optical disc player, without them, the operation cannot be performed.

As to claims 7 and 8, it would have been obvious to adjust recording parameter gain, polarity, write strategy or power control in APPLICANT'S PRIOR ART ( FIGURES 3,4A,4B,5A,5B and 6 ) as claimed since the micro-processors in control unit can be set to perform any desirable control functions.

12) Applicant's arguments with respect to claims **1-8** have been considered but are moot in view of the new ground(s) of rejection.

13) Any inquiry concerning this communication or earlier communications from the examiner should be directed to **TAN Xuan DINH** whose telephone number is **(571)272-7586**. The examiner can normally be reached on **Monday - Friday** from **9:00AM** to **5:00PM**.

The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the **Patent Application Information Retrieval (PAIR)** system. Status information for published applications may be obtained from either **Private PAIR** or **Public PAIR**. Status information for unpublished applications is available through **Private PAIR** only. For more

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information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the **Private PAIR system**, contact the **Electronic Business Center (EBC)** at 866-217-9197 (toll-free).

/TAN Xuan DINH/  
Primary Examiner, Art Unit 2627  
June 13, 2009

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